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## American Bar

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## AMERICAN BAR

### *Administrative Court for the United States*

Creation of a United States administrative court was approved by the Executive Committee of the American Bar Association, which authorized its Administrative Law Committee to draft a bill for that purpose to be introduced in the United States Congress, according to information made public by the Association today. The proposed tribunal would assume the judicial functions of certain administrative and judicial bodies now existing.

A hint that the proposal may at a later date be extended to include similar court powers now possessed by such bodies as the Interstate Commerce Commission, Federal Trade Commission, Federal Communications Commission, Federal Securities and Exchange Commission, and like bureaus, is found in the statement of the Administrative Law Committee report to the Executive Committee. The report states that it is "impolitic to establish more than a nucleus of such a court" at the present time, but that it was "highly important from the outset that court should function efficiently and be able to demonstrate its advantages."

The second part of the approved report urges that a bill be drafted and passed by Congress requiring the filing and registration in a central place of all executive fiat having the force of law. At its annual meeting in 1934, the American Bar Association pointed out the necessity of such action. In line with this suggestion the White House recently announced that administrative rulings will be printed regularly. The committee ex-

tends the requirement of publication by requiring "exercises of legislative power by executive or administrative officials" to be registered and published before becoming effective except in the case of emergency matters.

The idea of the administrative tribunal proposed by the committee is not entirely new. Senator Mills M. Logan of Kentucky introduced in the 73rd Congress a bill which was similar to, though not as comprehensive as, the one proposed by the Committee. The Committee report contemplates an amalgamation of the Court of Claims, Board of Tax Appeals, and Custom Courts into the new tribunal, which would also have jurisdiction over certain cases now falling within the scope of the United States District and Circuit Courts and Supreme Court of the District of Columbia.

Briefly, the plan provides for a court having two divisions—trial and appellate. These divisions would be divided into sections, one for each major subject. Appeals would lie from the trial division to the appellate division on questions of law. Final appeal would be made directly to the United States Supreme Court by certiorari or on certificate of the appellate division. The objective to be obtained in this matter, says the report, would be an "efficient judicial review" but one which will not burden the United States Supreme Court.

While headquarters would be in Washington, D. C., the divisions and sections of the court would be "ambulatory" with power to hold hearings anywhere in the United States. This mobile feature of the court would be enhanced by making United States District and Circuit Court judges competent to sit on the court wherever necessary.

The present officials on the abolished bodies would become the judges of the administrative court. The tenure of office, salary, and powers of the judges, and the personnel would be similar to the existing federal court set-up. The court would have power to make its own rules of practice and procedure; and it would be a court of record. Yearly reports would be made by the court to Congress.

Justice Holmes always believed in a new deal. He would, without doubt, have upheld the major purposes of the "new deal" of today. For 94 years he remained "invincibly young," as Justice Hughes once said. He brought to the Nation's altar the winnowed wisdom of years, but his heart was a boy's heart to the end. He never put life in a pigeon hold, nor the Constitution in a strait-jacket.

This is easily proved by his own words and I here set down "little fragments of my fleece that I have left upon the hedges of life."

In the first chapter of his first book, *The Common Law*, he said: "The life of the law has not been logic; it has been experience," and of course experience comes from experiment.

Again—

"The provisions of the Constitution are not mathematical formulas having their essence in their form; they are organic living institutions transplanted from English soil. Their significance is vital, not formal."

Again—

"The fourteenth amendment (and he would have said the same thing of any other part) is not a pedagogical requirement of the impracticable."

Again—

"The fact is that legislation in this country, as well as elsewhere, is empirical."

Again—

"There is nothing I more deprecate than the use of the fourteenth amendment beyond the absolute compulsion of its words to prevent the making of social experiments that an important part of the community desires, in the insulated chambers afforded by several States, even though the experiments may seem futile or even noxious to me and to those whose judgment I most respect."

Again—

"If there is any principle of the Constitution that more imperatively calls for attachment than any other, it is the principle of free thought—not free thought for those who agree with us, but freedom for the thought that we hate.

"We see nothing in the Constitution that compels the Government to sit by while a food supply is cut off and the protectors of our forests and our crops are destroyed.

"As any line of adjustment between conflicting rights must be drawn on practical grounds, there is no doubt that it may vary under different circumstances. For instance, in England, in view of the national importance of their great manufacturers, juries are instructed that, in counties where great works are carried on, parties must not stand on extreme rights.

"When 20 years ago a vague terror went over the earth and the word 'socialism' began to be heard, I thought, and still think that fear was translated into doctrines that had no proper place in the Constitution or the common law. Judges are apt to be naïf, simple-minded men, and they need something of Mephistopheles. We, too, need education in the obvious—to learn to transcend our own convictions and to leave room for much that we hold dear to be done away with, short of revolution, by orderly change of the law.

"We know too much to sacrifice good sense to syllogism.

"The law is the witness and external deposits of our moral life. Its history is the moral development of the race."